IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.l80 of l998

l.Shri Eknath Devaba Shelke
adult, occ. agril
2.Shri Dhondibhau Devaba Shelke
adult occ agril
3. Shri Maruti Devaba Shelke
adult, occ agril
4. Shri Sadashiv Devaba Shelke
adult. occ agril.
all r/at Jawale, Tal Ambegaon
Dist. Pune ..Petitioners

vs

l.State of Maharashtra
2. Special Land Acquisition Officer
no.l9, Collector Compound
Pune
3. District Resettlement Officer
Collector office Compound
Pune
4. Sou Asha Vithal Bhor
adult, occ. housewife r/at
village Ranjani, Taluka
Ambegaon Dist. Pune..... respondents

Mr.R.K Saroj for S V Pitre for petitioners

Ms S.S.Bhende AGP for State

CORAM:A.P.SHAH & S.C.DHARMADHIKARI JJ.
Dated l4.l0.2004

P.C:

Heard advocates.

l. By this petition the petitioners are seeking to quash and set aside the notices issued under section 4(l) and section 6 of the Land Acquisition Act, l894 and the award passed by the SLAO in

respect of Gat No.l40 situated at village Jawale, Taluka Ambegaon, District Pune. The petitioners are brothers and respondent no. 4 is their sister. The land Gat No.l40 originally belonged to one Sakharam Tukaram Ramoshi (Shirtad) who inducted the petitioners' father Devaba Ravaji Shelke in the said land as a tenant in l956-57. The name of the petitioners' father was entered in 7 x l2 extract as a tenant made vide Mutation Entry No.99l. The land in question is Ramoshi Vatan land and after abolition of Vatan, the same was regranted on new tenure to the son of original landlord viz Babu Sakharam Ramoshi (Shirtad) in l972. It appears that the landlord Babu Ramoshi executed an agreement of sale with one Sitaram Honaji Chaware and another on 2.6.l977. Therefore proceedings were initiated under section 84(C) of the Bombay Tenancy and Agricultural Lands Act, l948,hereinafter referred to as Bombay Tenancy Act, for setting aside the transaction between Babu Ramoshi and Sitaram Chavare and another and ultimately the land was forfeited to the State Government in l988 and the name of the Government was entered vide Mutation Entry No. 435.

2. The petitioners' father throughout this period

was cultivating the land and since he was tenant prior to l.4.l957 he became deemed purchaser under the Bombay Tenancy Act and consequently the said land came to be granted to the petitioners' father by Tahasildar, Ambegaon by his order dated l3.l0.l993 under section 84(C) of the Bombay Tenancy Act. On payment of occupancy price of the land to the Government to the tune of Rs.3427/-, Kabulayat dated 26.ll.l993 was issued to the petitioners' father by the Tahasildar, Ambegaon and the name of petitioners' father was entered to the 7 x l2 extract ass owner thereof by Mutation Entry No. 639.

3 It appears that village Jawale falls within the benefited zone of Kukadi Irrigation Project and as such provisions of the Maharashtra Resettlement of Project Displaced Persons Act, l976 were made applicable to the village Jawale by notification dated 7.2.l979 under section ll of the said Act. On l7.8.l984 a notification under section 4(l) of the Land Acquisition Act was issued in respect of an area of 2 hectors and 83 Ares out of Gat No. l40. Thereafter a notification dated 6.4.l987 was issued under section 6 of the Land Acquisition Act and thereafter award came to be passed on

3l.3.l989. As a result of the acquisition the petitioners would be virtually rendered landless.

4. The learned counsel appearing for the petitioners contended that the petitioners had not received notice of acquisition and entire proceedings were conducted without giving an opportunity to the petitioners . The learned AGP,however, maintained that the petitioners were served with the notices but they did not raise any objection in 5A proceedings. Be that as it may, there is no dispute that the total holding of the petitioners is less than 8 acres.If the holding of the petitioners. is less than 8 acres no part of their land was liable to be acquired in view of the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, l976. Therefore the impugned notices under section 4 and 6 and the award dated 3l.3.l989 are quashed and set aside. Rule is made absolute in terms of prayer clause (a) qua the land of the petitioners i.e.Gat No. l40 situated at village Jawale, Tal Ambegaon, Dist.Pune. No order as to costs.